,	Case 2:13-cv-01480-APG-NJK Docu	ument 1 Filed 08/19/13 Page 1 of 18	
1	СОМ	v	
2	Gary Diaz		
3	6440 Sky Pointe Dr., Las Vegas, NV 89131	23 - 25 - Will	
4	702-732-8319 Plaintiff pro se		
	Jacqueline Manzano		
5	1951 Corvette Street Las Vegas, Nevada 89142		
6	702-788-0599 Co-plaintiff in proper person		
7		DICTRICT COLUMN	
8	UNITED STATES DISTRICT COURT		
9	CLARK COUNTY, NEVADA		
10			
11	GARY DIAZ and JACQUELINE	2:13-cv-01480-APG-NJK	
12	MANZANO,	2.10 04-01-100-Al- G-143A	
13	Plaintiff(s),		
14	-VS-		
15	MVP GROUP LLC d/b/a MONTE'S PIZZA	VERIFIED COMPLAINT	
16	Defendant(s).		
17	WEDTETED CON	ADV AYNOT	
18	VERIFIED COMPLAINT		
19	COMES NOW Plaintiffs, Gary Diaz and Jacqueline Manzano, in proper person, hereby		
20	sues Defendant, MVP GROUP LLC d/b/a MONTE'S PIZZA for violations of the Telephone		
	sues Defendant, MVP GROUP LLC d/b/a Mo	ONTE'S PIZZA for violations of the Telephone	
21		ONTE'S PIZZA for violations of the Telephone 7 USC § 227(b)(1), 47 USC § 227(a) (iii), N.R.S.	
21 22	Consumer Protection Act (TCPA) Sec. 227., 47		
22	Consumer Protection Act (TCPA) Sec. 227., 47	7 USC § 227(b)(1), 47 USC § 227(a) (iii), N.R.S.	
22 23	Consumer Protection Act (TCPA) Sec. 227., 47 207.170 and claims the following;  I. INTRODU	7 USC § 227(b)(1), 47 USC § 227(a) (iii), N.R.S.	
22 23 24	Consumer Protection Act (TCPA) Sec. 227., 47 207.170 and claims the following;  I. INTRODU  1. This is an action for damages and injunctions.	7 USC § 227(b)(1), 47 USC § 227(a) (iii), N.R.S.  CCTION  ctive relief brought by Plaintiffs against	
22 23 24 25 26	Consumer Protection Act (TCPA) Sec. 227., 47 207.170 and claims the following;  I. INTRODU  1. This is an action for damages and injunct Defendants for violations of the Telepho	7 USC § 227(b)(1), 47 USC § 227(a) (iii), N.R.S.  CCTION  ctive relief brought by Plaintiffs against one Consumer Protection Act (hereinafter	
22 23 24 25	Consumer Protection Act (TCPA) Sec. 227., 47 207.170 and claims the following;  I. INTRODU  1. This is an action for damages and injunct Defendants for violations of the Telepho	7 USC § 227(b)(1), 47 USC § 227(a) (iii), N.R.S.  CCTION  ctive relief brought by Plaintiffs against	

2. Plaintiffs further alleges a claim for invasion of privacy ancillary to Defendant's repeated

text messages and of State Law obligations brought as supplemental claims including, but

not limited to, harassment.

- 3. Plaintiffs contend that the Defendant have violated such laws by repeatedly harassing Plaintiffs by sending text messages to their cellular phones, through the use of an automated telephone dialing system with 'no caller ID" thereby availing itself the opportunity to remain an unknown caller.
- 4. At all times relevant hereto Defendant and its agents, vendor and/or contractor agreed amongst themselves and in combination with each other and various agents known and unknown as to each overt act to engage in unlawful actions for a common purpose, to wit, to perpetrate a fraud against Plaintiffs with reckless disregard while it was engaged in intentional and improper conduct by the use of a telephone device.
- **5.** Discovery of the TCPA violations brought forth herein occurred within the statute of limitations as defined in the Telephone Consumer Protection Act, TCPA 47 U.S.C. §227 et seq.

#### II. JURISDICTION AND VENUE

- **6.** Jurisdiction of this Court arises under 47 U.S.C. §227(b)(3), and supplemental jurisdiction exists for the State law claims pursuant to 28 U.S.C. §1367.
- **7.** This court has jurisdiction because Plaintiffs reside here, the acts complained of herein occurred here, and Defendant conducts business here.
- **8.** This court has jurisdiction because the defendant reached into Clark County availing itself of the protection of the laws of Clark County Nevada and the defendant's acts in this County gave rise to the causes of action asserted herein.
- **9.** This court has jurisdiction because defendant engages in business in this State, to wit, Pizza food Chain and its business in this State gives rise to the causes of action asserted herein.
- **10.** This court has jurisdiction over defendant because the defendant caused injury to a person within the State of Nevada, to wit, while it was engaged in service activities, to wit, while it engaged in telephone text harassment within the State of Nevada.

- 11. This court has jurisdiction over defendant because the defendant carries on business in the State of Nevada and Defendant has violated the TCPA, and defendant has violated the act by repeatedly calling and leaving text messages on the Plaintiffs cellular phones.
- 12. This court has jurisdiction because Defendants conduct business in the State of Nevada and committed the acts that form the basis for this suit, to wit, by placing multiple text messages to Plaintiffs cell phones, by use of the telephone device with the intent to cause effects in the County of Clark, State of Nevada, this Court has personal jurisdiction over the Defendant(s) for purposes of this action.
- **13.** Venue is proper in the District of Clark County, Nevada because the acts of Defendant give rise to the causes of action that took place within this County particularly by placing automated text messages that were made and connected to Clark County, and the communications in question are all related to message marketing.
- **14.** Venue is proper in this District pursuant to 28 U.S.C. §1391b, in that the Plaintiffs reside here, the Defendants transact business here, and the conduct complained of occurred here.
- **15.** All conditions precedent to the filing of this action has been performed.

#### III. PARTIES

- **16.** Plaintiff, Gary Diaz, (hereinafter "Diaz"), is a natural person and is a resident of Clark County, State of Nevada.
- **17**. Co-Plaintiff, Jacqueline Manzano, (hereinafter "Manzano"), is a natural person and is a resident of Clark County, State of Nevada.
- **18.** Defendant, MVP Group, LLC d/b/a Monte's Pizza, (hereinafter "MONTE'S") is a Limited Liability corporation, with a business address located at; 1288 South Nellis Blvd., Las Vegas, Nevada 89142.
- **19.** The third party vendor/contractor that was contracted and used by Defendant, Monte's to send the text messages is presently unknown to the Plaintiffs, but will be revealed in discovery and later added as a Defendant to this action.
- **20.** MVP Group LLC d/b/a MONTE'S is a Limited Liability Corporation, is licensed with the Nevada Secretary of State, is engaged in the Pizza Restaurant business and regularly attempts to market its edible merchandise by the use of a telephone device, (ATDS), to

send text messages to consumers cellular phones.

**21.** Discovery of the TCPA violations brought forth herein occurred within the statute of limitations as defined in the Telephone Consumer Protection Act, TCPA 47 U.S.C. §227 et seq.

## IV. FACTUAL ALLEGATIONS

- 1. Upon information and belief, Monte's disclosed Diaz and Manzano's private cell phone numbers to a third party vendor contractor, without our express authorization, for the purpose of message marketing. The third party vendor contractor is presently unknown to the Plaintiffs, but will be revealed in discovery and later added as a Defendant to this action.
- 2. Between the dates of November of 2012 through August of 2013 multiple automated text messages were sent to the Plaintiffs cellular phones. Therefore, the TCPA violations alleged herein are within the statute of limitations as defined by 28 U.S.C. §1658(a).
- **3.** During the month of May 2013, Manzano received three (3) automated text messages from an unidentified number 99000, MONTE'S. Two automated text messages were received on May 8, 2013 and one (1) automated text message was received on May 17, 2013. There may be additional text messages sent by Defendant or its vendor/contractor, yet unknown, but will be revealed in discovery and later added to this complaint.
- **4.** Manzano has never, under no circumstances, given her direct authorization to MONTE'S to send text messages to her cellular phone.
- **5.** Upon information and belief, MONTE'S has demonstrated willful and knowing non-compliance with 47 U.S.C. §227(b)(1)(A) as Manzano received Three (3) unauthorized text messages from an automatic telephone dialing system (ATDS), from an unidentified number, 99000, with text messages from MONTE'S, each text for the purpose of message marketing.
- **6.** Between the months of November 2013 and August 2013, Diaz received about twenty (20) automated text messages from an unidentified number 99000, MONTE'S. There may be additional text messages sent by Defendant or its vendor/contractor, yet unknown, but will be revealed in discovery and later added to this complaint.
- **7.** Diaz has never, under no circumstances, given his direct authorization to MONTE'S to send text messages to his cellular phone.

- **8.** Upon information and belief, Monte's acted without authority when they gave Diaz and Manzano's cell phone numbers to a Vendor/contractor for the purpose of message marketing.
- 9. On or about July 24, 2013 Diaz and Manzano notified MONTE'S by USPS certified mail, with a Notice of Intent to Sue, to Monte's at its three (3) Las Vegas, NV address's. (#7010 2780 0003 7087 9380), 1288 S. Nellis Blvd., 89142, (7010 2780 0003 7087 9397), 238 S. Rainbow Blvd., 89145 and (7010 2780 0003 7087 9403), 5585 Simmons St., 89031.
- 10. On or about August, 2013 Diaz and Manzano notified MONTE'S by USPS certified mail, with a Notice of Pending Lawsuit to Monte's at its three (3) Las Vegas, NV address's. (#7010 2780 0003 7087 9427), 1288 S. Nellis Blvd., 89142, (7010 2780 0003 7087 9434), 238 S. Rainbow Blvd., 89145 and (7010 2780 0003 7087 9441), 5585 Simmons St., 89031. To date MONTE'S has failed to respond to either communication. (See USPS confirmation of delivery attached hereto EXHIBIT-A).
- **11.**Upon information and belief, it is Diaz and Manzano's contention that MONTE'S placed multiple text messages with the use of an automated telephone dialing system (ATDS) to our cellular phones, in an attempt to market its business, thereby, repeatedly invaded the privacy of Diaz and Manzano by the use of an unidentified phone number, (99000), between the months of November of 2012 and August of 2013, causing financial loss to Diaz and Manzano.
- **12.** Diaz and Manzano attempted, in good faith, to resolve this matter with MONTE'S prior to the filing of this action. However, our good faith efforts to settle and resolve this matter, were to no avail, as MONTE'S has totally ignored our mailed communications, leaving us no choice but to file this action with the US District Court of Nevada.

# V. FIRST COUNT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTIONS ACT 47 U.S.C. §§ 227 et seq.

- **13.** Plaintiffs incorporate all preceding paragraphs as fully set forth herein.
- **14.** Monte' violations include but are not limited to the following;
- **15.** Monte' violations of the TCPA has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A) by using an automatic telephone dialing system (ATDS) to send text messages to Diaz and Manzano's phone numbers, which are assigned to a

cellular telephone service.

**16.** Upon information and belief, to date, MONTE'S placed three (3) text messages to Manzano's, and in excess of nineteen (19) text messages to Diaz cell phone in an attempt to solicit the purchase of its edible merchandise, from an unidentified number (99000) and willfully and intentionally invaded the privacy of Manzano.

- 17. No established business relationship exists between Monte's and Diaz or Monte's and Manzano within the meaning of 47 U.S.C. §227, nor has either Plaintiff ever given Monte's direct permission to text their cell phones, as a result Monte' actions were willful and not for an emergency purpose, in violation of 47 U.S.C. §227(b)(1)(A)(iii).
- **18.** Upon information and belief, Montes' actually had a "high degree of awareness" and acted voluntarily and at the very least, knew or should have known that placing multiple text messages, using an automated dialing system (ATDS) to Diaz and Manzano's cellular phone, is a violation of 47 U.S.C. §227(b)(1)(A).
- **19.**Upon information and belief, as a result of breaching its duties and legal obligations, MONTE'S' repeated and unsolicited text messages, using an automatic telephone dialing system without prior express consent were willful within the meaning of 47 U.S.C. §227(b)(3).
- **20.**On various dates and times Monte's placed multiple unsolicited text messages to Diaz and Manzano' cell phone, using an unidentified number, (99000), thereby demonstrating willful and knowing deceptive behavior because, the multiple text messages were not for an emergency purpose nor in accordance with 47 U.S.C. §227(b)(1)(A)(iii).
- **21.**MONTE'S's aforementioned violations of the TCPA also constitute an invasion of Diaz and Manzano' right to privacy, causing injury to them to the point of mental anguish, frustration and financial loss, resulting in deliberate harassment.
- 22. Monte's aforementioned violations also constitute an intentional intrusion into the private places and into private matters of Diaz and Manzano's lives, conducted in a manner highly offensive to a reasonable person. With respect to these activities of Monte's, Diaz and Manzano had a subjective expectation of privacy and peaceful rest that was objectively reasonable under the circumstances.
- **23.** Monte' failed in its duties and legal obligations to comply with the TCPA 47 U.S.C. \$227(b)(1)(A) by its continuous violations of the act after receiving a Notice of Intent to Sue on July 26, 2013 at 10:08 am, (according to USPS records), Because Monte's continued to text **Diaz'** cell phone subsequent to July 26, 2013. USPS certified mail

24. delivery confirmation is attached hereto as, "EXHIBIT-A"

WHEREFORE, Plaintiffs respectfully pray that this court enter judgment for treble damages against Defendant for its violations of the TCPA, for actual and statutory damages, any punitive damages and costs incurred.

# VII. SECOND COUNT VIOLATIONS OF THE NEVADA REVISED STATUTE N.R.S. 207.170

- **25.** Plaintiffs incorporate all preceding paragraphs as fully set forth herein.
- **26.** Monte's violations include, but are not limited to the following;
- **27.** Monte's was attempting to market its edible merchandise by the use of telephone communication, and repeatedly sent unauthorized text messages to Diaz and Manzano using an unidentified number, 99000.
- **28.** Monte's violated NRS 207.170 because, a violation of any provision of NRS 207.170, or any regulation adopted pursuant thereto, shall be deemed to be a violation of this chapter.
- 29. MONTE'S' violations of the NRS 207.170 include but are not limited to the following;

  NRS 207.170 "False, deceptive or misleading advertising" defined. As used in NRS 207.170 to 207.177, inclusive, "false, deceptive or misleading advertising" as applied to a telephone communication includes, but is not limited to, any communication which is so made with the intent to solicit any person to purchase any merchandise, property or services, without initially disclosing such intent to the person.
- **30.** Monte's violated NRS 207.170 to 207.177, inclusive, by using an automated telephone device consisting of an unidentified phone number, (99000) to place multiple text messages to Diaz and Manzano' cellular phone, with the intent to solicit us to purchase Monte's edible merchandise, without identifying the caller, without disclosing its intent to the called party, thereby availing itself the opportunity to remain an unknown caller which is an unfair and deceptive practice, to wit, willfully and intentionally misleading, deceptive, annoying and frustrating to both Diaz and Manzano.
- **31.** Monte's violated NRS 207.170 by using an automated telephone device for the purpose of message marketing of its edible merchandise, resulting in recurring charges to Diaz and Manzano's cellular phone at their expense, thereby demonstrating willful and intentional non-compliance with the act because, NRS 207.170 specifically prohibits such harassing

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advertising, with the use of a telephone device.

WHEREFORE, Plaintiffs pray for judgment against Defendant, for actual, statutory damages, any punitive damages and costs incurred.

## VIII. THIRD COUNT

### (COMMON LAW INVASION OF PRIVACY BY INTRUSION)

- **32.** Plaintiffs incorporate all preceding paragraphs as fully set forth herein.
- **33.** As a direct and proximate cause of the acts described above, Plaintiffs have sustained and suffered damages.
- **34.** The Defendant's, conduct as alleged herein was willful, intentional, oppressive, fraudulent, malicious, and done in reckless disregard of the safety rights of the Plaintiffs, thereby warranting the imposition of punitive damages to be determined by this honorable court.

WHEREFORE, Plaintiffs respectfully requests that judgment be entered against Defendant, on all counts complained of herein, to the fullest extent of the law.

#### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of all issues so triable as a matter of law.

Respectfully submitted:

Dated this of August, 2013

By, / / Gary Diaz

6440 Sky Pointe Dr.

235 Las Wegas, NV 89131

702.723.8319 diazgrp@gmail.com

Plaintiff in proper person

Dated this 15<sup>7</sup>day of August, 2013

Jacqueline Manzano

1951 Corvette St.

Las Vegas, Nevada 89142

702-788-0599

Plaintiff in proper person

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## VERIFICATION

Plaintiffs, Gary Diaz and Jacqueline Manzano are over the age of 18 and competent to certify that the above Statements are true, correct and not misleading, to the best of our knowledge, except those Statements that are based upon information and belief. The undersigned understand that a false Statement in this Verified Complaint may subject us to penalties of perjury.

Respectfully submitted:

Dated this May of August, 2013

Gary Diaz 6440 Sky Pointe Dr.

235 Las Vegas, NV

89131 V 702.723.8319

diazgrp@gmail.com

Plaintiff in proper person

Dated this 15<sup>th</sup>day of August, 2013

Jacqueline Manzano 1951 Corvette St.

Las Vegas, Nevada 89142

702-788-0599

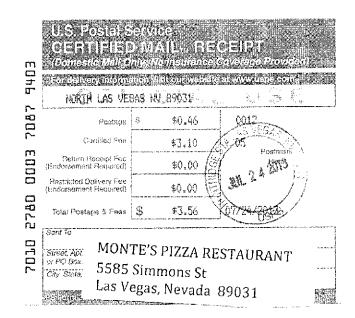
Plaintiff in proper person

EXHIBIT-A (USPS Certified mail delivery confirmation)

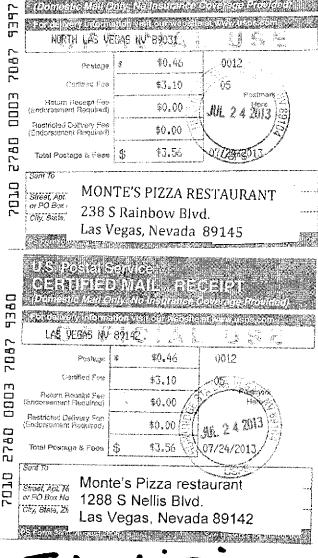
#### HUNTRIDGE STA LAS VEGAS, Nevada 891044460 3148830012-0097 07/24/2013 (800)275-8777 09:40:32 AM Sales Receipt Sale Unit Final Product Price Qty Price Description \$0.46 NORTH LAS VEGAS NV 89031 7nne-1 First-Class Letter 0.60 oz. Scheduled Delivery Day: Thu 07/25/13 \$3.10 @@ Certified 70102780000370879403 tabel #: \$3,56 Issue PVI: \$0.46 NORTH LAS VEGAS NV 89031 Zone-1 First-Class Letter 0.50 oz. Scheduled Delivery Day: Thu 07/25/13 \$3.10 @@ Certified 70102780000370879397 Label #: \$3,56 Issue PVI: LAS VEGAS NV 89142 Zone-1 \$0,46 First-Class Letter 0.50 oz. Scheduled Delivery Day: Thu 07/25/13 \$3,10 @@ Certified 70102780000370879380 tabel #: \$3,56 Issue PVI: ======== \$10.68 Total: Paid by: \$100.00 Cash -\$89.32Change Due: 🕯 For tracking or inquiries go to USPS.com or call 1-800-222-1811. Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information call

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\*\*\*\*\*\*\*\*\*\*\*\*



Opposition



1-24-2013

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DATE & TIME July 26, 2013, 10:08 am

July 26, 2013, 5:43 am

LOCATION NORTH LAS VEGAS, NV 89031

LAS VEGAS, NV 89199

LAS VEGAS, NV 89199

LAS VEGAS, NV 89199

Scheduled Delivery Day: July 25, 2013 Certified Mail\*\*

FEATURES

70102780000370879403

Processed through USPS Sort Facility Processed through **USPS** Sort Facility

July 25, 2013, 11:05 pm Depart USPS Sort July 25, 2013 Facility

Processed through USPS Sort Facility Dispatched to Sort Facility Acceptance

July 24, 2013, 11:28 pm July 24, 2013, 6:14 pm

July 24, 2013, 9:39 am

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PRINT DETAILS Ship a Package Send Mail Manage Your Mail **Business Solutions** Shop YOUR LABEL NUMBER SERVICE STATUS OF YOUR ITEM DATE & TIME LOCATION **FEATURES** 70102780000370879397 First-Class Mail<sup>6</sup> July 25, 2013 1:18 pm LAS VEGAS, NV 89145 Detivered Scheduled Delivery Day: July 25, 2013 Certified Mail<sup>\*\*</sup> Processed through July 25, 2013 7:01 am LAS VEGAS, NV 89199 **USPS Sort Facility** Depart USPS Sort July 25, 2013 LAS VEGAS, NV 89199 Facility Processed through July 24, 2013, 11:28 pm LAS VEGAS, NV 89199 USPS Sort Facility Dispatched to Sort July 24, 2013. 6:14 pm LAS VEGAS, NV 89104 Facility Acceptance July 24, 2013, 9:39 am LAS VEGAS, NV 89104 Check on Another Item Whal's your label (or receipt) number? Find LEGAL ON USPS.COM ON ABOUT.USPS.COM OTHER USPS SITES Privacy Policy > About USPS Home > Government Services -Business Customer Gateway > Terms of Use > Buy Stamps & Shop > Newsroom Postal Inspectors > FCIA > Print a Label with Postage > USPS Service Alerts > Inspector General > No FEAR Act EEO Data > Customer Service

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STATUS OF YOUR JIEM Processed through USPS Sort Facility

DATE & TIME July 25, 2013, 6:43 am LOCATION LAS VEGAS, NV 89199

Scheduled Delivery Day: July 25, 2013

**FEATURES** 

Certified Mail"

Depart USPS Sort Facility

Facility Acceptance

Processed through USPS Sort Facility Dispatched to Sort

July 24, 2013, 11:28 pm

July 25, 2013

LAS VEGAS, NV 89199 LAS VEGAS, NV 89199

July 24, 2013, 6:14 pm July 24, 2013, 9:40 am LAS VEGAS, NV 89104

LAS VEGAS, NV 89104

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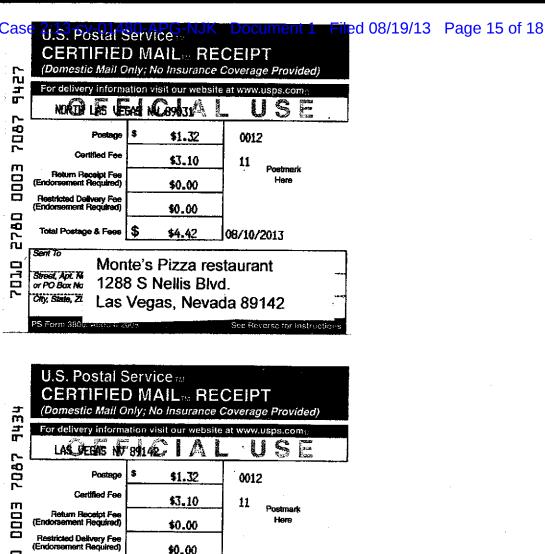
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SOUTH
1288 Nellis Blud.



2780 \$0.00 Total Postage & Fees \$ \$4.42 08/10/2013 MONTE'S PIZZA RESTAURANT Street, Ap or PO Bo 238 S Rainbow Blvd. City, State Las Vegas, Nevada 89145 PS Form

4-10-2013

9447	U.S. Postal Service TO CERTIFIED MAILTO RECEIPT (Domestic Mail Only: No Insurance Coverage Provided)  For delivery information visit our website at www.usps.com		
<u></u> 3	NORTH LAS VEGAS NAL-69031		
708	Poetage	\$ . \$1.32	0012
	Certified Fee	\$3.10	11 Postmark
0003	Return Receipt Fee (Endorsement Required)	\$0,00	Here
	Restricted Delivery Fee (Endorsement Required)	\$0.00	
2780	Total Postage & Fees	\$ \$4.42	08/10/2013
7010	Sent To MO	NTE'S PIZZA R	ESTAURANT
	or PO Box N 558		
Γ-	or PO Box No. 5585 Simmons St		
	Las	Vegas, Nevada	
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DATE & TIME August 12, 2013, 1:20 pm

August 11, 2013, 12:56 am

LOCATION LAS VEGAS, NV 89145

LAS VEGAS, NV 89199

LAS VEGAS, NV 89199

Scheduled Delivery Day: August 12, 2013 Certified Mail™

Processed at USPS Origin Sort Facility Depart USPS Sort

Facility Processed at USPS Origin Sort Facility Dispatched to Sort

Facility Acceptance August 10, 2013, 10:02 pm August 10, 2013, 3:26 pm

August 10, 2013

LAS VEGAS, NV 89199 LAS VEGAS, NV 89104

August 10, 2013, 10:10 am LAS VEGAS, NV 89104

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70102780000370879434

SERVICE

STATUS OF YOUR ITEM Notice Left

DATE & TIME

LOCATION August 12, 2013, 2:02 pm NORTH LAS

**FEATURES** 

Scheduled Delivery Day: August 12, 2013 Certified Mad."

Dispatched to Sort

August 10, 2013, 3:26 pm

LAS VEGAS, NV 89104

VEGAS, NV 89031

Facility

Acceptance

August 10, 2013, 10:10 am

LAS VEGAS, NV 89104

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**Business Solutions** 

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70102780000370879441

SERVICE
First-Class Mail®

STATUS OF YOUR ITEM

DATE & TIME August 12, 2013, 2:02 pm

August 11, 2013, 3:07 am

August 10 2013, 10:02 pm

August 10, 2013, 10:11 am

August 10, 2013

NORTH LAS VEGAS, NV 89031

LOCATION

Scheduled Delivery Day: August 12, 2013 Certified Mail\*

FEATURES

Processed at USPS Origin Sort Facility Depart USPS Sort

Facility
Processed at USPS
Origin Sort Facility
Dispatched to Sort

Acceptance

Origin Sort Facility
Dispatched to Sort August 10, 2013, 3:26 pm
Facility

LAS VEGAS, NV 89199 LAS VEGAS, NV 89104

LAS VEGAS, NV 89199

LAS VEGAS, NV 89199

LAS VEGAS, NV 89104

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